

7/27/94

REGION II

QUEST PARTNERSHIP a/k/a
QUEST ASSOCIATES,
Respondent.

U.S. EPA REGION II
Index No. II-
CERCLA-94-0126

JURISDICTION AND GENERAL PROVISIONS

2. This Administrative Order on Consent ("Order") is issued to Respondent by EPA pursuant to the authority vested in the President of the United States by Section 104 and 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§9604, 9606(a), 9607 and 9622, as amended ("CERCLA"), and delegated to the Administrator of EPA by Executive Order 12580, dated January 23, 1987, 52 Federal Register 2023. and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-C and 14-14-D.

3. EPA has notified the State of New Jersey of this action pursuant to section 106(a) of CERCLA, 42 U.S.C. §9606(a).

4. Respondent's participation in this Order shall not constitute or be construed as an admission of liability or of EPA's Findings, Conclusions of Law or Determinations contained in this Order except in a proceeding to enforce the terms of this Order. Respondent agrees to comply with and be bound by the terms of this Order. Respondent further agrees that it will not contest the basis or validity of this Order or its terms.

PARTIES BOUND

5. This Order shall apply to and be binding upon Respondent, its agents, successors, and assigns. The signatories to this Order certify that they are authorized to execute and legally bind the parties they represent to this Order. No change in the ownership or corporate status of the Respondent or of the Site shall alter Respondent's obligations under this Order.

6. Until the termination date of the Order, Respondent shall provide a copy of this Order to any subsequent owners or successors before ownership rights, stock, or assets in a corporate acquisition are transferred.

DEFINITIONS

7. As used in this Order, unless the context clearly requires some other meaning, the following terms shall have the following meanings:

- a. CERCLA shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 et seq.
- b. Day shall mean calendar day.
- c. DEP shall mean the New Jersey Department of Environmental Protection.
- d. EPA shall mean the United States Environmental Protection Agency.
- e. Hazardous substance shall mean any substance that falls within the definition of a "hazardous substance" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and shall also mean any mixture(s) containing any such hazardous substance(s) at any concentration(s).

- f. NCP shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated by EPA pursuant to Section 105 of CERCLA, 42 U.S.C. §9605, at 40 C.F.R. Part 300, and all amendments or modifications thereto.
- g. On-Scene Coordinator shall mean the person designated by EPA to be responsible for monitoring of all actions and activities required pursuant to this Order, and for receipt of all items submitted to EPA under this Order. The On-Scene Coordinator shall have the authority lawfully vested in a Remedial Project Manager and an On-Scene Coordinator by the National Contingency Plan, 40 C.F.R. Part 300.
- h. Pollutant or contaminant shall mean pollutant or contaminant that falls within the definition of "pollutant or contaminant" as the term is defined in 42 U.S.C. 9601(33), as amended CERCLA Section 101(33) and NCP 40 C.F.R. Part 300.5,, i.e., ...any pollutant or contaminant that may present an imminent and substantial danger to public health or welfare.
- i. Respondent shall mean Quest Partnership a/k/a Quest Associates which includes the Partners individually, Carthon Investments Inc., John Lo Porto, Alexander Sommers and Philip Burghart.
- j. Site shall mean the real property (and all structures, containers and impoundments thereon) known as the Quest Partnership located on Margaret King Avenue (Block 311, Lot 4), Ringwood, Passaic County, New Jersey.
- k. Work Plan shall mean the document, attached and incorporated into this Order, submitted by Respondent and approved by EPA that details the performance of the removal action in conformance with this Order.

EPA'S FINDINGS

8. The Site is located on Margaret King Avenue, Block 311, Lot 4, Ringwood, Passaic County, New Jersey. The Site is currently owned by Quest Partnership a/k/a Quest Associates, a Partnership. The partners include Carthon Investments Inc., John Lo Porto, Alexander Sommers and Philip Burghart, individually.

9. The Site contains hazardous substances or pollutants or contaminants dumped by an unknown entity into each of two pits, (each pit being approximately 15 ft. in diameter) and 27 drums of such hazardous substances, pollutants and or contaminants which had been subsequently pumped from the pits. The Site is not secure and as such is accessible to unauthorized persons.

10. The Site is situated approximately 150 ft. from a surface water stream which is a tributary to the Wanaque Reservoir, a drinking water source for parts of New Jersey. The pits are recharged continuously by groundwater due to the elevation of the water table and depth of the pits.

11. On July 5, 1994, Mr. Philip Burghart, a partner in Quest Partnership, discovered the hazardous substances or pollutants or contaminants disposed of in the pits at the Site. Mr. Burghart informed EPA that Quest Partnership owned the Site when the materials were dumped and currently owns the property.

12. On July 12, 1994, EPA received a request from the New Jersey Department of Environmental Protection ("DEP") to conduct a removal action under CERCLA at the Site. EPA entered the Site on July 12, 1994, to commence a CERCLA Removal Site Evaluation for purposes of determining eligibility.

13. On July 13, 1994 EPA entered the Site to sample the hazardous substances or pollutants or contaminants and perform field Hazard Categorization Tests on the material disposed of at the Site. The compounds which are situated in the pits and drums, based on such field testing, have been determined to belong in the flammable class of chemical compounds, and/or the peroxide class of chemical compounds.

14. On July 13, 1994, a sample was drawn from compounds disposed of on the Site. A field Hazard categorization flame test for this sample was conducted on July 13, 1994. During this test, vapors given off by the compound burst into flame when passed through a heat source.

15. On July 13, 1994, a sample was drawn from compounds disposed of on the Site. A peroxide test strip indicates the presence of peroxide materials when the test strip turns blue within 15 seconds of coming into contact with compounds in the peroxide class of chemical compounds reacts with the test compounds. A sample taken from the compounds dumped on the Site resulted in turning the test strip blue within 15 seconds of contact with the sample. Compounds in the peroxide class of chemical compounds are considered unstable, and readily support combustion. This class of chemical compounds may also be explosive.

16. On July 21, 1994, EPA entered the Site and took additional samples from the pits and drums at the Site. This material was sent for laboratory analysis to further define and analyze the hazardous substances or pollutants or contaminant.

CONCLUSIONS OF LAW AND DETERMINATIONS

17. Based on the Findings of Fact set forth above EPA has determined that:

18. The Site is a "facility" within the meaning of that term as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

19. The contaminants found at the Site, as identified in the Findings of Fact include "pollutants or contaminants" within the meaning of that term, as defined in Section 101(33), 42 U.S.C. § 9601(33) of CERCLA and NCP Part 300.5

20. Respondent is a "person" within the meaning of that term as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

21. Respondent may be liable under section 107(a) of CERCLA, 42 U.S.C. §9607(a).

A. Respondent is the owner and/or operator of the facility as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(2), and within the meaning of section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

B. Respondent was the owners and/or operator of the facility at the time of disposal of hazardous substances or pollutants or contaminants at the facility, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2).

22. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance or pollutant or contaminant as defined by sections 101(22) of CERCLA, 42 U.S.C. §9601(22).

23. The conditions present at the facility constitute an imminent and substantial endangerment to public health or welfare. The conditions at the facility may present an imminent and substantial endangerment to the environment. Factors that may be considered are set forth in section 300.415(b)(2) of the NCP, as amended 40 C.F.R. Part 300. These factors include, but are now limited to, the following:

a. actual or potential contamination of drinking water supplies or sensitive ecosystems, section 300.415(b)(2)(ii); this factor is present at the Site due to the existence of pollutants or contaminants or hazardous substances, in the pits, which directly impact the groundwater, and indirectly the nearby surface water stream and subsequently the Wanaque Reservoir.

b. threat of fire or explosion, section 300.415(b)(2)(vi); this factor is present at the Site due to the presence of the peroxide class of chemical compounds and

flammable pollutants and/or contaminants or hazardous substances at the Site.

24. The removal actions required by this Order are necessary to protect the public health and welfare, and are not inconsistent with the NCP or CERCLA.

25. The actual or threatened release into the environment of any pollutant or contaminant at the Site may present an imminent and substantial danger to the public health or welfare within the meaning of section 104(a) of CERCLA, 42 U.S.C. §9604(a).

26. The actual or threatened release of hazardous substances which may be present at the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment, and within the meaning of section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

ORDER

Effective Date:

27. Based on the foregoing, IT IS HEREBY ORDERED THAT Respondent shall perform the removal action required by this Order or retain a contractor or contractors to perform the removal action. All activities performed pursuant to this Order shall be completed as soon as possible even though maximum time periods for their completion are specified herein.

28. Within two (2) calendar days of the effective date of this Order, Respondent shall notify EPA of the name and qualifications of the contractor retained to perform the removal action under this Order. Respondent shall also notify EPA of the name and qualifications of any other contractor(s) or subcontractor(s) retained to perform the removal action under this Order at least one (1) calendar day prior to commencement of such removal action. EPA retains the right to disapprove of any, or all, of the contractor(s) and/or subcontractor(s) retained by the Respondent to do the removal action. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor within one (1) calendar day following EPA's disapproval and shall notify EPA of that contractor's name and qualifications within one (1) calendar day of EPA's disapproval.

29. Within three (3) calendar days of the effective date of this Order, Respondent shall submit to EPA for review and approval a Work Plan to include or address the following:

- a. Designate a person to be known as the Facility Coordinator and will submit his or her name, address, and telephone number in writing to the On-Scene Coordinator. The Facility Coordinator shall be

responsible for oversight of all on-site activities required by this Order.

- b. Provide an implementation schedule and description of site stabilization activities. These activities shall include the following:
 - i. temporary securing of site to limit access by unauthorized personnel
 - ii. containment and staging of released hazardous liquids and soils
- c. Provide a Site Specific Health and Safety Plan (HASP) in accordance with paragraph 39 below.

30. Within two (2) calendar days of EPA's approval of the Work Plan, Respondent shall commence implementation of the following field activities:

- a. erection of site fencing (construction fence) and posting of warning signs,
- b. removal of liquids from the site depressions areas to drums or other containers,
- c. excavation of contaminated soils to drums or other containers based on EPA-OSC field determination,
- d. staging of all containers, on site and provide fencing or other appropriate security to prevent unauthorized access.

31. Within fourteen (14) calendar days of the effective date of this Order, respondent shall complete all activities described in Paragraph 30 above.

32. EPA may approve, disapprove, require revisions to, or modify any or all portions of the above Work Plan. If thereafter EPA approves of the Work Plan, EPA will so notify Respondent in writing and the Work Plan shall thereafter be deemed incorporated into this Order and enforceable as part of this Order.

33. A copy of the Work Plan submitted to EPA under this Order shall be sent by certified mail, return receipt requested, or express mail to the following address:

Emergency & Remedial Response Division
U.S. Environmental Protection Agency, Region II
2890 Woodbridge Avenue
Building 209
Edison, NJ 08837-3679

Attention: Carl Pellegrino, On-Scene Coordinator

A copy of all written communications shall also be sent to:

Chief, New Jersey Superfund Branch
Office of Regional Counsel

U.S. Environmental Protection Agency
26 Federal Plaza
New York, NY 10278

Attention: Mary V. Smolenski, Esq.

34. Within fourteen (14) days after completion of all removal actions required under this Order, the Respondent shall submit for EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in section 300.165 of the NCP entitled "OSC Reports". The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials staged on site. The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

GENERAL PROVISIONS

35. All employees and contractors of the Respondent who engage in any activity related to this Order, or whose assistance is required to carry out the work required by this Order, shall be available to and shall cooperate with EPA and/or EPA's representatives, agents, contractors and consultants.

36. All work conducted by Respondent pursuant to this Order shall be performed in accordance with prevailing professional standards.

37. No informal advice, guidance, suggestions or comments by EPA shall be construed to relieve Respondent of any of its obligations under this Order.

38. Respondent shall comply with all applicable provisions of the NCP, 40 C.F.R. Part 300, et seq. and all other applicable Federal and State statutes and regulations while performing all of the work required by this Order.

39. Respondent shall comply with all applicable Federal and State health and safety requirements by all workers and agents of Respondent who enter the Site, including compliance with all applicable regulations of the Occupational Safety and Health Administration (OSHA), as contained in 29 C.F.R. Part 1910, et seq. and elsewhere.

40. Respondent shall be responsible for obtaining all necessary permits, licenses and other authorizations needed to carry out the work required by this Order.

41. The United States and any and all agencies thereof shall not be liable for any injuries or damages to any person or property resulting from any acts or omissions of Respondent's officers, directors, employees, contractors or agents when carrying out any activity related to this Order; Respondent shall not represent to anyone that the United States or any agency thereof is or may be a party to any contract entered into by Respondent in carrying out any activity pursuant to this Order.

42. Nothing contained in this Order shall affect the right of EPA to initiate an action for civil penalties or treble damages against any entity, including the Respondent, pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b).

43. Nothing contained in this Order shall act as a bar to, a release of, a satisfaction of, or a waiver of any claim or cause of action which EPA has at present or which EPA may have in the future against any entity, including the Respondent, on any matters relating to the Site.

44. Nothing contained in this Order shall be construed to mean that the Respondent is the only potentially responsible party with respect to the release and threatened release of hazardous substances at the Site. Nothing contained in this Order is intended to indicate that other potentially responsible parties identified by EPA for the Site should not participate and/or fund and cooperate with the Respondent in performing the work required by this Order.

45. Nothing in this Order constitutes a decision by EPA on preauthorization or on any approval of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

46. Nothing in this Order creates any right in the Respondent or in any other entity to require that EPA perform any activity relating to the Site. Nothing in this Order shall be used in whole or in part to support any cause of action by Respondent against EPA.

47. Respondent(s) shall provide and/or obtain access to the Site and off-site areas to which access is necessary to implement this Order, and provide access to all records and documentation related to the conditions at the Site and the actions conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State of New Jersey representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which EPA determines to be necessary. Respondent shall submit to EPA, upon request, the results of all sampling or tests and other data

generated by Respondent or their contractor(s), or on the Respondent's behalf during implementation of this Order.

48. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local; state; and federal laws and regulations.

49. The OSC shall be responsible for overseeing the Respondent's implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

50. Nothing contained in this Order shall affect the right of EPA to enter into any Consent Decree, to issue any Consent Order or to issue any other orders unilaterally to the Respondent (or to any other responsible parties for the Site) pursuant to CERCLA, or to require the performance of any additional response actions which EPA determines are necessary for the Site.

51. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at or from the Site.

52. If the Respondent fails to comply with any provision set forth in this Order, or otherwise violates the terms of this Order, the EPA-OSC may elect to:

- a. Demand that the Respondent cease work at the Site; and/or
- b. Use federal funds to complete the Work required by the Order; and/or
- c. Initiate an action against the Respondent under Sections 104(e), 106(b), 107(a) and/or 107(c) of CERCLA, 42 U.S.C. §§9604(e), 9606(b), 9607(a) and/or 9607(c), respectively; and/or
- d. Take any other actions authorized under Federal laws or regulations.

53. If a court issues an Order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

54. Respondent agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action (a) arising from, or on account of, acts or omissions of Respondent, Respondent's officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assignees, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreements, or arrangement between (any one or more of) Respondent(s), and any persons for performance of work on or relating to the Site, including claims on account of construction delays.

TERMINATION AND SATISFACTION

55. At such time as EPA determines that the work required by this Order has been satisfactorily completed, the Director, Emergency and Remedial Response Division, EPA - Region II will notify Respondent that the requirements of this Order have been satisfied. The provisions of this Order shall be deemed satisfied when Respondent receives this written notice signed by the Director, Emergency and Remedial Response Division, EPA - Region II which states that all the actions required by this Order have been satisfactorily completed.

EFFECTIVE DATE

56. This Order shall be effective on the date the Order is signed by the Regional Administrator or her delegate. All times for performance of ordered activities shall be calculated from this effective date.

57. Respondent shall initiate implementation of this Order on the date this Order becomes effective.

The undersigned representative of Respondent, Quest Partnership, hereby certifies that he is fully authorized to enter into the terms and conditions of this Order and to bind the parties he represents to this documents.

Agreed this 24th day of July, 1994

By: _____

Signature

Printed Name: PHILIP A. BURGHART

Title: PARTNER - QUEST ASSOCIATES

It is so ORDERED and agreed this 27 day of July 1994.

United States Environmental Protection Agency

By:

WJ Muszynski
William J. Muszynski, P.E.
Deputy Regional Administrator

Date: JUL 27 1994